

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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TO

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 08/765,588 | 04/25/97 | HAYWARD | N 10441 |

SCULLY SCOTT MURPHY & PRESSER
400 GARDEN CITY PLAZA
GARDEN CITY NY 11530

HM12/0222

EXAMINER

SAOUD, C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1647 | 28 |

DATE MAILED: 02/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|------------------------|---------------------------------------|---------------------------------------|
| Advisory Action | Application No. 08/765,588 | Applicant(s) HAYWARD et al. |
| | Examiner Christine J. Saoud | Group Art Unit 1647 |

THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) expires _____ months from the mailing date of the final rejection.
- b) expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due two months from the date of the Notice of Appeal filed on Oct 19, 2000 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Jan 17, 2001 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

The proposed amendment(s):

- will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- will not be entered because:
 - they raise new issues that would require further consideration and/or search. (See note below).
 - they raise the issue of new matter. (See note below).
 - they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

Applicant's response has overcome the following rejection(s):

All rejections of record

- Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

- The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: 28, 30, 33, 44-47, 50, 52, and 53

Claims objected to: none

Claims rejected: none
- The proposed drawing correction filed on _____ has has not been approved by the Examiner.
- Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). 25.
- Other Claims 1-25, 34, and 37-42 are still pending, yet non-elected without traverse. See attached.

1. This application is in condition for allowance except for the following formal matters:

Claims 1-25, 34, and 37-42 are still pending, but they are non-elected with traverse. The Examiner does not have the authority to cancel these claims, even though the elected claims are in condition for allowance. Applicant was advised of the status of these claims in paper #23 and was advised to either cancel the claims or file a petition of the original restriction requirement. Appropriate action is required by Applicant; (1) cancellation of the claims or (2) filing of a petition of the original restriction requirement.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine Saoud, Ph.D., whose telephone number is (703) 305-7519. The examiner can normally be reached on Monday to Friday from 7AM to 3PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623.

Certain papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1 (CM1). The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). NOTE: If Applicant *does* submit a paper by fax, the original signed copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers.

Official papers filed by fax should be directed to (703) 308-4556. If this number is out of service, please call the Group receptionist for an alternate number. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294. Official papers should NOT be faxed to 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

February 22, 2001

CHRISTINE J. SAoud
PRIMARY EXAMINER

Christine J. Saoud